

CITY OF HORSESHOE BAY

ORDINANCE NO. ORD 08-02-19B

**ACCEPTING AND APPROVING A SERVICE AND ASSESSMENT ROLL FOR THE
ESCONDIDO PUBLIC IMPROVEMENT DISTRICT**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HORSESHOE BAY, TEXAS ACCEPTING AND APPROVING A SERVICE AND ASSESSMENT PLAN AND ASSESSMENT ROLL FOR THE ESCONDIDO PUBLIC IMPROVEMENT DISTRICT ; MAKING A FINDING OF SPECIAL BENEFIT TO THE PROPERTY IN THE DISTRICT; LEVYING SPECIAL ASSESSMENTS AGAINST PROPERTY WITHIN THE DISTRICT AND ESTABLISHING A LIEN ON SUCH PROPERTY; PROVIDING FOR PAYMENT OF THE ASSESSMENTS IN ACCORDANCE WITH CHAPTER 372, TEXAS LOCAL GOVERNMENT CODE, AS AMENDED; PROVIDING FOR THE METHOD OF ASSESSMENT AND THE PAYMENT OF THE ASSESSMENTS, PROVIDING PENALTIES AND INTEREST ON DELINQUENT ASSESSMENTS, PROVIDING FOR SEVERABILITY, AND PROVIDING AN EFFECTIVE DATE

WHEREAS, Section 108.052 of the Texas Local Government Code authorizes a municipality that annexes the land included within, and abolishes, a municipal utility district that contains a “defined area,” and the voters of which, prior to the district’s dissolution, voted to issue bonds secured by property taxes within the defined area, on its own motion, to establish a public improvement district under Subchapter A, Chapter 372, Local Government Code (the “PID Act”), for the purpose of issuing and selling municipal bonds, in an amount not exceeding the amount of unissued bonds that were approved by the voters of the defined area, for the purpose of carrying out the purposes for which the MUD bonds were voted; and

WHEREAS, by Resolution Nos. RES-07-10-16B and RES-07-11-13B of the City Council (the “City Council”) of the City, the City, upon its own motion, created a public improvement district pursuant to the PID Act, to be known as the “Escondido Public Improvement District of the City of Horseshoe Bay, Texas” (the “Escondido PID”), having boundaries that are co-terminous with a defined area previously created by Lake LBJ Municipal Utility District prior to its dissolution, for the purpose of issuing bonds in an amount not exceeding \$5,475,000, that are to be payable from and secured by the levy of assessments against privately-owned property located within the Escondido PID that the City finds will be benefited by the Public Improvements, with such bonds to be issued for the purposes of (i) acquiring and paying for the portion of the Public Improvements that have already been completed, (ii) paying all or a portion of the construction costs of completing the remaining portions of the Public Improvements that have not been completed, (iii) paying the costs associated with developing and financing the Public Improvements, including costs of issuing such bonds and funding debt service and

capitalized interest reserves, and (iv) paying the costs of establishing, administering and operating the Escondido PID; and

WHEREAS, on September 28, 2007, October 3, 2007, October 10, 2007 and November 21, 2007, the City published notice of its authorization of the District in the Llano News, a newspaper of general circulation in the City; and

WHEREAS, no written protests of the District from any owners of record of property within the District were filed with the City Secretary within the time period allowed by the PID Act; and

WHEREAS, on January 22, 2008, the Council adopted a resolution accepting the proposed Service and Assessment Plan and the proposed Assessment Roll and authorized the publication notice of a public hearing to consider the approval of the proposed Service and Assessment Plan and proposed Assessment Roll, in a newspaper of general circulation in the City and such proposed Assessment Roll was placed on file with the City Secretary for public inspection; and

WHEREAS, the City Council, pursuant to Section 372.016(b) of the PID Act, published notice on January 30, 2008 in the Llano News and on January 31, 2008 in the Horseshoe Bay Beacon of a public hearing to consider the proposed "Assessment Roll" and the "Service and Assessment Plan" and the levy of the "Assessments" on property in the District; and

WHEREAS, the City Council, pursuant to Section 372.016(c) of the PID Act, by causing the mailing of the notice of the public hearing to consider the proposed Assessment Roll and the Service and Assessment Plan and the levy of Assessments on property in the District to the last known address of the owners of the property liable for the Assessments; and

WHEREAS, the City Council convened the hearing at 3:00 p.m. on the 19th day of February, 2008, at which all persons who appeared, or requested to appear, in person or by their attorney, were given the opportunity to contend for or contest the Plan, the Assessment Roll, and each proposed assessment, and to offer testimony pertinent to any issue presented on the amount of the Assessment, the allocation of the costs of the public improvements, the purposes of the Assessment, the special benefits of the Assessment, and the penalties and interest on annual installments and on delinquent annual installments of the Assessment; and

WHEREAS, the City Council finds and determines that the Assessment Roll and the Service and Assessment Plan should be approved and that the Assessments (as defined in the Service and Assessment Plan) should be levied as provided in this Ordinance and the Service and Assessment Plan and Assessment Roll; and

WHEREAS, the City Council also finds and determines that a Notice of Assessment should be filed against the Assessed Property (as defined in the Service and Assessment Plan) in the real property records of Llano, County, Texas.

WHEREAS, the City Council further finds that there were no written objections or evidence submitted to the City Secretary in opposition to the Service and Assessment Plan, the allocation of the costs of the public improvements, the Assessment Roll, and the levy of Assessments; and

WHEREAS, the City Council closed the hearing, and, after considering all written and documentary evidence presented at the hearing, including all written comments and statements filed with the City, determined to proceed with the adoption of this Ordinance in conformity with the requirements of the PID Act.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HORSESHOE BAY, TEXAS:

I. Terms

Terms not otherwise defined herein are defined in the Service and Assessment Plan attached hereto as Exhibit A. (the “Service and Assessment Plan”).

II. Findings

The findings and determinations set forth in the preambles are hereby incorporated by reference for all purposes. The City Council hereby finds, determines, and ordains, as follows:

The apportionment of the PID Costs, and the Annual Collection Costs pursuant to the Service and Assessment Plan is fair and reasonable, reflects an accurate presentation of the special benefit each property will receive from the construction of the public improvements identified in the Service and Assessment Plan, and is hereby approved;

The Service and Assessment Plan covers a period of at least five years and defines the annual indebtedness and projected costs for the Improvement Project;

The Service and Assessment Plan apportions the cost of a public improvement to be assessed against property in the District and such apportionment is made on the basis of special benefits accruing to the property because of the improvement.

All of the real property in the District which is being assessed in the amounts shown in the Assessment Roll will be benefited by the services and improvements proposed to be provided through the District in the Service and Assessment Plan, and each parcel of real property will receive special benefits in each year equal to or greater than each annual Assessment and will receive special benefits during the term of the Assessments equal to or greater than the total amount assessed;

The method of apportionment of the PID Costs and Annual Collection Costs set forth in the Service and Assessment Plan results in imposing equal shares of the PID Costs and Annual Collection Costs on property similarly benefited, and results in a reasonable classification and formula for the apportionment of the Costs;

The Service and Assessment Plan should be approved as the service plan and assessment plan for the District as described in Sections 372.013 and 372.014 of the PID Act;

The Assessment Roll in the form attached as Exhibit D to the Service and Assessment Plan (the “Assessment Roll”) should be approved as the assessment roll for the District;

The provisions of the Service and Assessment Plan relating to due and delinquency dates for the Assessments, interest on Annual Installments, interest and penalties on delinquent Assessments and delinquent Annual Installments, and procedures in connection with the imposition and collection of Assessments should be approved and will expedite collection of the Assessments in a timely manner in order to provide the services and improvements needed and required for the area within the District; and

A written notice of the date, hour, place and subject of this meeting of the City Council was posted at a place convenient to the public for the time required by law preceding this meeting, as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended, and that this meeting has been open to the public as required by law at all times during which this Ordinance and the subject matter hereof has been discussed, considered, and formally acted upon.

III. Assessment Plan

The Service and Assessment Plan is hereby accepted and approved pursuant to the PID Act Sections 372.013 and 372.014 as the service plan and the assessment plan for the District.

IV. Assessment Roll

The Assessment Roll is hereby accepted and approved pursuant to the PID Act Section 372.016 as the assessment roll of the District.

V. Levy and Payment of Special Assessments for Costs of Improvement Project

The City Council hereby levies an assessment on each tract of property located within the District, as shown and described in the Service and Assessment Plan and the Assessment Roll, in the respective amounts shown on the Assessment Roll as a special assessment on the properties set forth in the Assessment Roll.

The levy of the Assessments shall be effective on the date of execution of this Ordinance levying assessments and strictly in accordance with the terms of the Service and Assessment Plan.

The collection of the Assessments shall be as described in the Service and Assessment Plan.

Each Assessment may be paid in a lump sum or may be paid in Annual Installments pursuant to the terms of the Service and Assessment Plan.

Each Assessment shall bear interest at the rate or rates specified in the Service and Assessment Plan.

Each Annual Installment shall be collected each year in the manner set forth in the Service and Assessment Plan.

The Annual Collection Costs for Assessed Properties shall be calculated pursuant to the terms of the Service and Assessment Plan.

VI. Method of Assessment

The method of apportioning the costs of the public improvements is as set forth in the Service and Assessment Plan.

VII. Penalties and Interest on Delinquent Assessments

Delinquent Assessments shall be subject to the penalties, interest, procedures, and foreclosure sales set forth in the Service and Assessment Plan. The Assessments shall have lien priority as specified in the PID Act and the Service and Assessment Plan.

VIII. Prepayments of Assessments

As provided in subsection 372.018(b) of the PID Act and in Section VI(E) of the Service and Assessment Plan, the owner (the "Owner") of any Assessed Property may prepay the Assessments levied by this Ordinance.

IX. Lien Priority

The Assessments and the Annual Installments levied hereby shall be binding upon the Assessed Parties, as the Landowners of Assessed Properties, and their respective transferees, legal representatives, heirs, devisees, successors and assigns in the same manner and for the same period as such parties would be personally liable for the payment of ad valorem taxes under applicable law. Assessments shall have lien priority as specified in the Service and Assessment Plan and the PID Act.

X. Recording

The City Council hereby authorizes the recordation, by the City, of a Notice of Assessment, such notice to be filed against the Assessed Property in the real property records of Llano County, Texas.

XI. Appointment of Administrator and Collector of Assessments

(a) Appointment of Administrator

MuniCap, Inc., of Columbia, Maryland, is hereby appointed and designated as the initial Administrator of the Service and Assessment Plan and of the Assessments levied by this Ordinance. The Administrator shall perform the duties of the Administrator described in the Service and Assessment Plan and in this Ordinance. The Administrator's fees, charges and expenses for providing such service shall constitute an Annual Collection Cost.

(b) Appointment of Temporary Collector

Toni Vanderburg, Administration Manager of the City, is hereby appointed as the temporary collector of the Assessments (the "Collector"). The Collector shall serve in such capacity until such time as the City shall arrange for the Collector's duties to be performed by the Llano County Tax Assessor and Collector or another qualified collection agent selected by the City.

XII. Applicability Of Tax Code

To the extent not inconsistent with this Ordinance, and not inconsistent with the PID Act or the other laws governing public improvement districts, the provisions of the Texas Tax Code shall be applicable to the imposition and collection of Assessments by the City.

XIII. Severability

If any provision, section, subsection, sentence, clause, or phrase of this Ordinance, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, void, or invalid, the validity of the remaining portions of this Ordinance or the application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Council that no portion hereof, or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality, voidness, or invalidity of any other portion hereof, and all provisions of this Ordinance are declared to be severable for that purpose.

XIV. Effective Date

This Ordinance shall take effect, and the levy of the Assessments, and the provisions and terms of the Service and Assessment Plan shall be and become effective on upon passage and execution hereof.

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ADOPTED AND APPROVED by the City Council, by a vote of 5 members voting “for” and 0 members voting “against” and with 0 absentees, on this 19th day of February, 2008.

CITY OF HORSESHOE BAY, TEXAS

/S/

Robert W. Lambert, Mayor

Attest:

/S/

Teresa L. Moore, City Secretary

Approved as to Form:

/S/

Monte Akers, City Attorney

EXHIBIT A
SERVICE AND ASSESSMENT PLAN